



CITY COUNCIL STAFF REPORT

MEETING DATE: April 30, 2003

Agenda Item # 1

Prepared/Approved
By:

Council Services and
Records Manager/
City Clerk

Submitted By:

City Manager

LIBRARY AND PARKS & RECREATION COMMISSION INTERVIEWS

RECOMMENDED ACTIONS:

1. **Conclude** interviews
2. **Appoint** to fill four (4) vacancies on the Library Commission and three (3) vacancies to the Parks and Recreation Commission, terms expiring April 1, 2005

EXECUTIVE SUMMARY:

The Council scheduled interviews to fill four (4) vacancies on the Library Commission and three (3) vacancies on the Parks & Recreation Commission for April 23, 2003. The City received five (5) applications from individuals interested in serving on the Library Commission and eight (8) applications from individuals interested in serving on the Parks & Recreation Commission.

Staff contacted all applicants to notify them of the scheduled interviews before the City Council on April 23. Unfortunately, half of the applicants had previously scheduled vacations/business trips. Therefore, the Council agreed to conduct a second day of interviews on April 30.

The City Council was able to interview 3 of the 5 Library Commission and 4 of the 8 Parks & Recreation Commission applicants on April 23 as follows: **Library Commission** - Kathleen Keeshen, George Nale, and Kathleen Stanaway; and **Parks & Recreation Commission** - Jesus Ambriz, Rick Page, Marlon Spencer, and Craig van Keulen.

Staff recommends that the City Council conclude the interview process at the April 30 meeting. The applications for the following individuals are attached for Council reference:

Library Commission: Jeanne Gregg and Ruth Phebus

Parks & Recreation Commission: Robert Graham, Laura Hagiperos, Nancy Harris, and Don Jensen.

Upon conclusion of the interview process, staff recommends that the Council appoint four (4) individuals to serve two-year terms on the Library Commission; and three (3) individuals to serve two-year terms on the Parks & Recreation Commission, all terms expiring April 1, 2005.

FISCAL IMPACT: The time necessary to prepare this report is accommodated in the Council Services and Records Manager's operating budget.



**CITY COUNCIL/REDEVELOPMENT
AGENCY STAFF REPORT**

MEETING DATE: April 30, 2003

**WORKSHOP ON THE DRAFT COMPREHENSIVE
HOUSING STRATEGY**

RECOMMENDED ACTION(S) Provide comments and policy direction to staff regarding the draft comprehensive housing strategy.

Agenda Item # 2

Approved By:

BAHS Director

Submitted By:

City Manager

EXECUTIVE SUMMARY:

In December 2002, the City Council/Agency received a report on the draft Comprehensive Housing Strategy (CHS), directed staff to distribute the report to interested parties for comments, and directed staff to schedule a workshop for further discussion. For reference is a copy of the draft CHS as provided to the Agency in December.

The CHS makes specific program type and funding recommendations. In general, the CHS recommends that the majority of ownership opportunities be targeted toward moderate income households and rental opportunities be targeted toward lower income households. This distribution is based on the determined need, available financing sources, and required levels of subsidies. The CHS also raises policy issues for consideration by the Agency which will impact the structure and focus of the programs (e.g., target homebuyer assistance towards moderate income or lower income groups).

The workshop will focus on the CHS's proposed income targeting and resource allocation, program and project recommendations, and policy issues for the Agency's consideration. Seifel Consulting, the firm retained to prepare the CHS, will assist staff in facilitating the workshop. Materials for the workshop will be distributed to Agency members under a separate cover prior to the meeting.

FISCAL IMPACT: None at this time

City Council Study Session on the Comprehensive Housing Strategy

Draft Meeting Agenda

April 30, 2003, 6PM ~ 8PM
City Council Chambers

	<u>Topic</u>	<u>Action</u>	<u>Time</u>
1.	Housing Strategy Review (Attachment A) <ul style="list-style-type: none">• Housing Needs and Obligations• Existing Programs and Housing Production• Recommendations	Presentation	6:00 ~ 6:10pm
2.	Income Targeting and Resource Allocation	Discuss and Reach Consensus	6:10 ~ 6:20pm
3.	Review of Program Recommendations (Attachment B) <ul style="list-style-type: none">• Affordable New Ownership Housing Construction• Homeownership Assistance• Special Needs Housing• Affordable New Rental Housing Construction• Rehabilitation• TOD/Downtown Affordable Housing Development• Landbanking and Site Assembly• Affordable Housing Preservation• Self-Help Affordable Homeownership	Discuss and Reach Consensus	6:20 ~ 7:40pm
4.	Other Recommended Actions	Discuss	7:40 ~ 7:45pm
4.	Opportunity Sites	Presentation	7:45 ~ 7:50pm
5.	Next Steps	Discussion	7:50 ~ 8:00pm

Attachments

Attachment A Key Tables and Figures
Attachment B Program and Other Recommendations Review Worksheet

Attachment A – Key Tables and Figures

Table II-13
Morgan Hill Housing Quantified Objective
1999-2006

Income Level	New Construction	Rehabilitation	Conservation	Total	Units Built 1999-2001	Units Needed 2002-2006
Very Low	297	30	15	342 28%	175	167 24%
Low	228	45	10	283 23%	213	70 10%
Moderate	<u>615</u>	<u>N/A</u>	<u>N/A</u>	<u>615</u> 50%	<u>155</u>	<u>460</u> 66%
Subtotal	1140	75	25	1240 100%	543	697 100%
Above Moderate	<u>1186</u>	<u>N/A</u>	<u>N/A</u>	<u>1186</u>	<u>750</u>	<u>436</u>
Total	2,326	75	25	2,426	1,293	1,133

Source: Morgan Hill Housing Element, December 2001 Goals

Table II-14
Income Targeting Goals

	ABAG RHND 1999-2006		RDA 2000-2004	
	Units ¹	Required Targeting	Projected Units	Projected Targeting
Very Low	455	35.10%	275	62.08%
Low	228	17.60%	156	35.21%
Moderate	<u>615</u>	<u>47.40%</u>	<u>6</u>	<u>2.71%</u>
Subtotal	1,298	100.00%	437	100.00%
Above Moderate	1,186			
Total	2,484			

¹ ABAG's allocation was used to calculate targeted spending. The City modified its quantified objectivity for very low income units to 297 because it does not believe sufficient subsidies will be available to finance the construction of 455 units. However, this modification does not change its income targeting requirements for expenditure of Housing Set-Aside Funds.

Source: ABAG, 3/15/2002

Table II-15
Age Targeting Goals

	Population	Required Targeting
Under 65	31,048	92.5%
65 years and over	<u>2,508</u>	<u>7.5%</u>
Total	33,556	100.0%

Source: 2000 Census

Table II-16
Revised Affordable Housing Obligation and Production
1995-2004

Income Level	New Housing	Percent Required	Affordable Units Required	Credit/ (Deficit) Carry Over	Net Required	Produced/ Anticipated	Credit/ (Deficit)
<u>1995-1999</u>							
Very Low	855	6%	52	(1)	53	183	130
Low/Mod	855	9%	77	89	(12)	151	<u>163</u>
							293
<u>2000-2004</u>							
Very Low	560	6%	34	130	(93)	183	368
Low/Mod	560	9%	51	163	(97)	193	<u>223</u>
							591

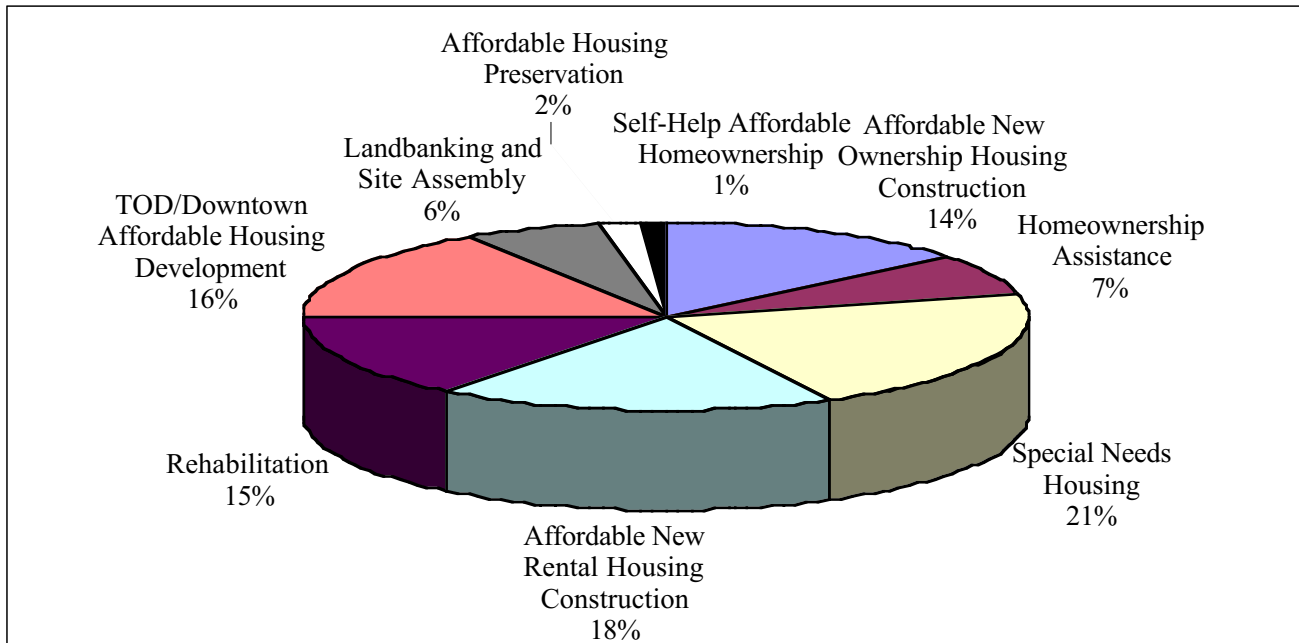
Source: Morgan Hill Implementation Plan, December 1999. Figures may differ from most current estimates.

Table III-2
Projected Affordable Housing Production
1990-2004

	Total 1990-2004			
	Total	VL	L	M
<u>Affordable Housing Production</u>				
New Ownership Construction	86	0	45	41
New Rental Construction	311	252	59	0
Special Needs Housing	19	19	0	0
Agency Assisted Substantial Rehabilitation	143	117	25	1
Non-Agency Assisted Affordable Housing	373	83	232	58
Subtotal	932	471	361	100
Percent	100%	50%	39%	11%
Other Housing Assisted	925			
Grand Total	1,857			

Sources: Morgan Hill BMR Inventories, RDA Housing Project List, HCD Annual Housing Reports

**Figure V-I
Housing Funding Allocation
FY 2004/05 – FY 2009/10**



**Table V-1
Recommended Resources Allocation
FY 2004/05 – FY 2009/10**

Program Type	Proposed Local Funding Allocation		Projected Local Subsidy Per Unit	Units	Income Targeting		
					Very Low	Low	Mod
Affordable New Ownership Housing Construction*	\$2,400,000	12%	\$60,000	40	0%	20%	80%
Homeownership Assistance*	\$1,200,000	6%	\$40,000	30	0%	20%	80%
Special Needs Housing*	\$3,600,000	18%	\$60,000	60	80%	20%	0%
Affordable New Rental Housing Construction*	\$3,000,000	15%	\$50,000	60	80%	10%	10%
Rehabilitation*	\$2,500,000	12%	\$50,000	50	75%	25%	0%
TOD/Downtown Affordable Housing Development	\$2,700,000	13%	\$50,000	54	25%	25%	50%
Landbanking and Site Assembly	\$1,000,000	5%	\$25,000	40	25%	25%	50%
Affordable Housing Preservation	\$330,000	2%	\$30,000	11	50%	50%	0%
Self-Help Affordable Homeownership	\$200,000	1%	\$25,000	8	100%	0%	0%
Program Subtotal/Average	\$16,930,000	84%	\$47,960		48%	21%	31%
Agency Administration	\$3,226,000	16%					
Total Expenditures	\$20,156,000	100%					
Proposed Agency Assisted BMR Program Units				353	171	74	109
Projected RDCS Units				96	10	62	24
Total Projected Units				449	181	136	133
% Distribution of Total Units					40%	30%	30%

*All of these developments could be located in the Downtown area.

Attachment B – Program and Other Recommendations Review Worksheet

1. Affordable New Ownership Housing Construction

Recommendation

- Continue BMR program.
- Encourage higher density housing types that are less expensive than new single family homes.
- Pursue a variety of forms of assistance to encourage the production of additional affordable ownership housing.
- Aid developers in securing other funding assistance.

Program Type	Proposed Local Funding Allocation		Projected Local Subsidy Per Unit	Units	Income Targeting		
					VL	L	M
Affordable New Ownership Housing Construction	\$2,400,000	12%	\$60,000	40	0%	20%	80%

Policy Considerations

Income Targeting

What is desired targeting? The funding gap for units affordable to low income households is greater than for moderate income households. A combination of low and moderate income units will require less Agency assistance, thereby maximizing the production of units.

Assistance for Specific Groups

Should housing be targeted for teachers or other public service employees or should it be open to all households with qualifying incomes? We recommend that if the Council considers programs for specific groups, that the eligibility requirements be based on household income.

Additional Resources

Should the City contribute additional funds to the Santa Clara Housing Trust Fund?

BMR Program Policy Issues

Staff update.

Discussion

2. Homebuyer Assistance

Recommendation

- Increase City's outreach to households that may benefit from downpayment or another form of homebuyer assistance.
- Target 80 percent of Agency's assistance for downpayment assistance to moderate income households and 20 percent to low income households.
- Consider helping households purchase existing single family housing, which may be less costly than newly constructed homes, as well as single family attached, townhomes and condominiums.

Program Type	Proposed Local Funding Allocation		Projected Local Subsidy Per Unit	Units	Income Targeting		
					VL	L	M
Homeownership Assistance	\$1,200,000	6%	\$40,000	30	0%	20%	80%

Policy Considerations

Income Targeting

What is desired targeting? More households could be helped by targeting downpayment assistance to moderate income households rather than low income households. However, moderate income homebuyers have more options in the private market than low income homebuyers.

Assistance for Specific Groups

Should homebuyers assistance program be targeted for specific groups (teachers or other public service employees) or should it be open to all households with qualifying incomes? We recommend that if the Council considers programs for specific groups, the eligibility requirements should be based on household income.

Second Mortgage Assistance

Should second mortgage assistance be limited to first time homebuyers?

New ownership housing construction assistance versus homeownership assistance of existing housing

What should be the balance between these programs, as they serve the same groups? While the cost of an existing housing unit may be less than a new housing unit, the administrative cost of the homeownership assistance program may be significant.

Discussion

3. Special Needs Housing

Recommendation

- Continue to provide grant and loan rehabilitation programs for existing units occupied by lower income senior households.
- Assess need for additional shared housing. If significant, work with staff of the shared housing program and other nonprofit organizations to acquire or finance the construction of small rental complexes to provide shared housing for single parents and/or seniors.
- Explore feasibility of a senior housing development.
- Explore creation of smaller units for seniors and/or assisted living offering seniors various levels of services. Provide assistance, if such housing cannot be developed by the private sector acting alone.

Program Type	Proposed Local Funding Allocation	Projected Local Subsidy Per Unit	Units	Income Targeting		
				VL	L	M
Special Needs Housing	\$3,600,000 18%	\$60,000	60	80%	20%	0%

Policy Considerations

Funding allocation and Number of Units

Is \$3.6 million an adequate level of funding for this program? Should the funds be primarily focused on one development or several smaller developments?

Discussion

4. Affordable New Rental Housing Construction

Recommendation

- Target City assistance for affordable rental construction as follows: 80% affordable to very low income households, 10% to low income households and 10% to moderate income households.
- Evaluate providing assistance through alternative means, such as providing for site improvements.
- Assist with securing funding from other sources in order to maximize the leveraging of the Housing Set Aside Fund.

Program Type	Proposed Local Funding Allocation	Projected Local Subsidy Per Unit	Units	Income Targeting		
				VL	L	M
Affordable New Rental Housing Construction	\$3,000,000 15%	\$50,000	60	80%	10%	10%

Royal Apartments Blight Elimination and New Rental and Ownership Construction
Staff update.

Policy Considerations

Income Targeting

To what income levels should the rental units be targeted?

Assistance for Specific Groups

Should teachers, public sector employees, or other groups receive a preference for the units?

Landbanking

Should the commercial property be sold or landbanked for a future project?

Discussion

5. Rehabilitation Programs

Recommendation

- Continue to provide financial assistance for substantial housing rehabilitation to rental property owners with very low or low income tenants in exchange for long term affordability (as required by the funding source).
- Target units as follows: 75% to units affordable to very low income households and 25% to low income households.

Program Type	Proposed Local Funding Allocation	Projected Local Subsidy Per Unit	Units	Income Targeting		
				VL	L	M
Rehabilitation	\$2,500,000 12%	\$50,000	50	75%	25%	0%

Policy Considerations

Minor Home Repair Program

Should the City decrease funding for minor home repairs, or finance such repairs solely through the CDBG revolving rehabilitation loan fund in order to free up funding for other high priority affordable housing needs?

The proposed 80 West Fifth Street rehabilitation and Morgan Hill Apartments were both identified as possible rehabilitation opportunities. While Agency staff continue to discuss rehabilitation assistance possibilities with the owner, guidance is requested as to the level of assistance the Agency would be willing to offer for each of the projects.

80 West Fifth Street Rehabilitation

- How important is it to improve the appearance of the units?
- If the owner is unwilling to rehabilitate the units via the Agency's loan program, would the Agency be willing to offer a grant for paint and landscaping improvements?
- The paint and lead paint grant maximum is \$14,000. Minimal landscaping improvements would probably cost an additional \$10,000. What is the Agency's upper limit?

Morgan Hill Apartments Blight Elimination and Rehabilitation

- How important is it to improve the appearance of the units?
- If the owner is unwilling to rehabilitate the units via the Agency's loan program, would the Agency be willing to offer a grant for landscaping improvements? Agency staff would propose to install minimal improvements to improve the appearance from the street.
- What is the Agency's upper limit?

Discussion

6. TOD/Downtown Affordable Housing Development

Recommendation

- Target affordable housing efforts and a substantial amount of resources to transit-oriented affordable housing initiatives in the Downtown area.
- Provide assistance to a larger development in the Downtown, rather than smaller infill projects.

Program Type	Proposed Local Funding Allocation		Projected Local Subsidy Per Unit	Units	Income Targeting		
					VL	L	M
TOD/Downtown Affordable Housing Development	\$2,700,000	13%	\$50,000	54	25%	25%	50%

Policy Considerations

Priority Status for Downtown

Should the City have a priority status for Downtown in whatever program it undertakes? Should the Council set aside a certain number of housing unit to be produced in the Downtown? (Under Measure P, the Council has the authority to do a set aside.)

Funding

Should the Downtown RFP be funded from this program (estimated cost \$1 million)?

Discussion

7. Landbanking and Site Assembly

Recommendation

- Pursue options for landbanking either through direct acquisitions by the Agency or assisting a non-profit housing developer in acquiring land for future development.
- Review various opportunity sites and determine where it is most beneficial to provide assistance for site assembly and preparation.

Program Type	Proposed Local Funding Allocation		Projected Local Subsidy Per Unit	Units	Income Targeting		
					VL	L	M
Landbanking and Site Assembly	\$1,000,000	5%	\$25,000	40	25%	25%	50%

Policy Considerations

Program Priority

Should funds be allocated to this program at this time or at some point in the future?

Program Option

Should the City consider a program where the City would purchase property at a price that is below market value in exchange for the seller taking the difference between the purchase price and appraised value as a charitable contribution deduction on the seller's obligation tax?

Discussion

8. Affordable Housing Preservation

Recommendation

BMR Preservation Program Recommendations

- Continue with deed restrictions or covenants on below market rate (BMR) units created through the City's inclusionary housing program and with Agency assistance.
- Concentrate efforts on developing new affordable units through the RDCS and through City assistance for the development of new units with affordability covenants of at least 45 years (55 for rental).

Affordable Multifamily Recommendations

- Continue to extend affordability restrictions as part of the next sale to eligible purchasers.
- Annually monitor status of at-risk assisted rental units.
- Assist nonprofit housing organizations in acquiring and/or rehabilitating existing affordable rental housing through the provision of financial assistance in exchange for extending the affordability period as required by applicable funding source.
- Do not go forward with monthly rental subsidy for the 25 at risk units. Do not acquire the units.
- Concentrate on developing new affordable multifamily units through the RDCS and BMR program, with affordability covenants and resale restrictions, such as right of first refusal.
- Assist nonprofits interested in acquiring or rehabilitating existing affordable rental housing.

Mobile Home Park Preservation Recommendations

- Pursue maintaining mobile home parks as options for affordable housing.
- Target mobile home park preservation assistance: 50% to units affordable to very low income households and 50% to low income households.

Program Type	Proposed Local Funding Allocation		Projected Local Subsidy Per Unit	Units	Income Targeting		
					VL	L	M
Affordable Housing Preservation	\$330,000	2%	\$30,000	11	50%	50%	0%

Policy Considerations

Crest Avenue Four-plex

Should the City purchase a four-plex at Crest Avenue Apartments? Should the City help South County buy it or should the City let another entity buy it, as a regulatory agreement is in place?

Program Priority

Should City pursue this program or focus on something else?

Discussion

9. Self-Help Affordable Homeownership

Recommendation

- Assist self-help affordable homeownership programs such as Habitat for Humanity or HCD's California Self-Help Housing Program.
- Target all self-help affordable homeownership assistance for units affordable to very low income households.

Program Type	Proposed Local Funding Allocation		Projected Local Subsidy Per Unit	Units	Income Targeting		
					VL	L	M
Self-Help Affordable Homeownership	\$200,000	1%	\$25,000	8	100%	0%	0%

Policy Considerations

Location

Should the City pursue these programs for small infill sites?

Funding

Should the City's funding allocation be increased and should more units be produced through this program?

Form of Assistance

Should the City provide assistance with land purchases and payment of impact fees?

Discussion

10. Other Recommendations

Recommendation

- Consider amending Redevelopment Plan for continued blight alleviation and affordable housing production. Possible amendments could increase the tax increment cap, authorize tax allocation bonds, and authorize eminent domain authority.
- Consider zoning modifications to encourage development to meet the City's housing needs.
- Evaluate whether the review process for the Residential Planned Development zone (RPD) delays and/or deters projects, and determine what steps may be taken to eliminate any deterrents.
- Consider incentives and actions to provide below market rate units, and mobile home parks and manufactured home subdivisions. Possible incentives include:
 - Provide exceptions to design and development standards on a case-by-case basis that reduce the cost of housing units without sacrificing objectives for which standards were adopted.
 - Reduce or pay development impact fees with Housing Set Aside funds.
 - Process permits on a priority basis to ensure project funding is not jeopardized.
- Review the effect of development fees on the local housing market.
- Consider a Fee Credit Bank for projects in the Downtown area or Redevelopment Project Area.

Discussion

Begin discussions of recommendations presented above.

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – APRIL 16, 2003**

CALL TO ORDER

Mayor/Chairperson Kennedy called the special meeting to order at 6:02 P.M.

ROLL CALL ATTENDANCE

Present: Mayor/Agency Chairperson Kennedy
Council/Agency Members Carr, Chang, Sellers, and Tate.

DECLARATION OF POSTING OF AGENDA

Deputy City Clerk Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

2.

CONFERENCE WITH LEGAL COUNSEL (POTENTIAL LITIGATION) & CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority: Government Code 54956.8

Property: 700 Jarvis Drive

Negotiating Parties:

For City: City Manager

For Property Owners: William Schwerm, Broker

Closed Session Topic/Under Negotiation: Price and Terms of Payment

3.

CONFERENCE WITH LEGAL COUNSEL (POTENTIAL LITIGATION) & CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority: Government Code 54956.8 & 54946.9(c)

Property: APN 825-06-002, 003, 029, 030; 36.6 acres (Railroad/Maple - Butterfield Retention Basin Site)

Negotiating Parties:

For City: City Manager; Public Works Director; City Attorney; Gale Conner, special counsel

For Property Owners: Costa Family Partners

Closed Session Topic/Under Negotiation: Potential Litigation & Price and Terms of Payment

4.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Legal Authority:	Government Code Section 54965.9(a)
Case Name:	Santa Clara Valley Audubon Society v. City of Morgan Hill
Case No.:	Santa Clara County Superior Court, No. CV 815655
Attendees:	City Council, City Manager, City Attorney

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/ Chairperson Kennedy opened the Closed Session items to public comment. No comment being offered, the public comment was closed.

ADJOURN TO CLOSED SESSION

Mayor/Chairperson Kennedy adjourned the meeting to Closed Session at 6:03 P.M.

RECONVENE

Mayor/Chairperson Kennedy reconvened the meeting at 7:07 P.M.

CLOSED SESSION ANNOUNCEMENT

City Attorney/ Agency Counsel Leichter announced there were no reportable actions, and the closed session discussions were completed for this date.

SILENT INVOCATION

Mayor/Chairperson Kennedy invited all to join in a silent invocation.

PLEDGE OF ALLEGIANCE

Mayor/Chairperson Kennedy extended an invitation to City Treasurer Roorda to lead the Pledge of Allegiance.

CITY COUNCIL REPORT

Council Member Tate presented the City Council report, and stated that the Library Grant Application is in the second round. He reported that the City submitted the application on March 26, and that they feel they had come up with some great ideas for the second round application. The State had expected to receive at least 150 applications, but only 76 were submitted; which is good news. Thanked everyone for their support of the second round application.

He also reported on the Joint Powers Authority agreement for the Library. The library has experienced a 15% increase in activity, and they are working to figure out how to increase productivity to meet the new demands with lower staffing levels. He encouraged everyone to use the self checkout machines.

Currently there is an assessment on property tax bills for the library, and they are looking at an election in March 2004 to extend Measure A funding for library support.

Youth Empowered for Success (YES) will be holding a meeting on April 28 at the Community and Cultural Center in the El Toro room to provide an in-depth presentation of the 40 developmental assets in support of the local youth.

May 3 and 4, 2003, the Relay for Life rally will be held to raise funds to fight cancer. He invited anyone who wishes to participate or pledge to give him a call.

CITY COUNCIL SUBCOMMITTEE REPORTS

Council Member Chang reported on the MTC-ABAG merger, and stated that the merger is coming to a halt at this time. The issue will be discussed again in January 2004.

She also reported that she testified in favor of AB218 for senior housing projects to be counted in the Housing Element; and that AB1160 had passed the assembly. She requested support for AB 980.

Ms. Chang also reported that AB1690, which would change the approval necessary for bond issues for firefighters and public safety from 2/3 vote to a majority vote, has passed the Committee and will be discussed at the League of California Cities at April 24 meeting. She requested that staff prepare an analysis and position paper on this issue.

Council Member Carr reported that the Measure P Task Force met to review comments by the Planning Commission and City Council on the recommendations made by the Task Force. There were only a few that the Council wanted reviewed again, and the Task Force has made headway in coming closer to where the Council is on these issues. He reported that they have also reviewed the public survey that was done, and applied that input as well. Council Member Carr stated that there will be a public forum to go over the Measure P Update and learn the history behind the Measure on April 29, 2003, at 7:00 P.M. in the City Council Chambers.

Mayor Kennedy, reporting on the Urban Limit Line Subcommittee, stated that they have held two meetings to look at establishing a 50-year urban limit line around the City of Morgan Hill, in accordance with the General Plan requirement to study a possible greenbelt around the city. He stated that this is a very broad based committee with many interests represented, and is very balanced. The next meeting will be on the second Monday in May.

Mayor Kennedy also reported that the Valley Transportation Authority (VTA) Financial Ad Hoc Advisory Committee will be presenting their report to the VTA Board of Directors next Friday at a

workshop. He requested time on the agenda next week to present to Council the suggestions that will be made to the VTA Board.

CITY MANAGER REPORT

City Manager Tewes reported on the budget process stating that during the next two weeks staff will be working to hammer out the recommended budget for Council consideration in about 4 weeks. Work is being done on a five year plan to bring spending in line with revenues, and believes through judicious use of reserves and some budget cuts, the budget can be brought in for a soft landing. However, if the State Legislature and Governor take revenue from us that are not anticipated, it could be much more difficult, and could be a hard landing. Staff are currently working to put together a budget that reflects the local economy and cost structure; and it is not likely we will know what the State will do until later in the summer.

CITY ATTORNEY REPORT

City Attorney Leichter reported on monthly litigation summary, and stated that Item Number 5, the San Jose Christian College vs. City of Morgan Hill case now has a date set for oral argument hearing before 9th Circuit Court of Appeals on May 14, 2003. After the oral arguments, it will take three to six months for an opinion to be issued.

OTHER REPORTS

City Treasurer Roorda presented the Finance & Audit Quarterly Report. Reported that General Fund Income is at 67% of the total budget for the year, and the expenses are at about 68%, representing a very good matching of revenue to expenses at about three-quarters of the way through the fiscal year. The adjusted budget reflects more expenditures than income for the fiscal year, and currently we are pretty much in that range of budget performance. Budgeted expenditures are \$634,000, and actual expenditures are \$650,000 at this time. He reported that income is running under what was projected in the budget, but city staff has been able to reduce expenditures to a lower level than was projected in the budget. He stated he is optimistic that we will come in close to the budgeted amount by the end of the year.

He expressed concern about a drop in the sales tax revenue for this quarter, and that it is a little bit lower than last year. This could be an area of concern going forward.

ANNOUNCEMENT

Council Member Chang announced that the Morgan Hill Medical Foundation will be holding a fund raiser on May 31. The decision will be made this week about the location, but it will be either at Corde Valle or at the Community and Cultural Center. She asked that people mark their calendars and plan to attend.

PUBLIC COMMENT

- Ms. Cindy Gobin stated that she was hoping to get on the agenda tonight or at the next Council meeting to request that a test garden be grown using City water to make sure that perchlorate, even though it tests at less than 3 ppb, is not being soaked up in vegetables at a 50 times higher level than the water is testing. Concerned that perchlorate is being fed to our kids at a level of 150 ppb in vegetables. Can this be tested to make sure that it is O.K.?

Mayor Kennedy responded by asking the City Manager to respond to Ms. Gobin following the Public Comment portion of the agenda.

- Ms. Yolanda Ramirez, and several other tenants from 14720 Monterey Road, appeared before the Council to report that they are all facing the same problem of being evicted, and requested the Council's assistance in getting time to relocate. They just found out they are going to have to move. Code Enforcement Officer Martin has spoken to them and informed them that there have been meetings with their landlord Dante Baines, but the landlord had not passed on this information to the tenants, and that there are problems with the zoning and with the other problems that were not taken care of by the landlord. The tenants just found this out last week, and are concerned that they are going to be forced to move. They are requesting that they be given two to three months to relocate.

Mayor Kennedy asked that City staff meet with them on this issue.

City Attorney Leichter stated that she is familiar with this situation, and stated that she and the Director of Community Development Bischoff will be happy to meet with them at the break tonight.

Mayor Kennedy asked Ms. Ramirez and the others to remain at the meeting, and meet with the Ms. Leichter and Mr. Bischoff during the break at 8:00 p.m.

Ms. Ramirez agreed to do this, and thanked the Council.

- Ms. Virginia Halla addressed the Council about the speeding that occurs on East Dunne Avenue in the 25mph zone at Nordstrom School. Noted that Redwood City has installed signs that read "What don't you understand about 25 miles an hour?", "Traffic School is Boring", "Slow Down", and "Speeding Tickets Available Ahead". There has been a noticeable drop in speed at these specific points. She noted that San Jose has some iridescent school signs that catch the eye immediately. She suggested that the City of Morgan Hill not wait until the last minute before acting, but obtain some of these signs as soon as possible, and before some small child, teacher, or parent is killed.

Mayor Kennedy thanked Ms. Halla for her comments.

There being no further comment, the public comment portion was closed.

Mayor Kennedy asked the City Manager to address some of the issues that were raised.

City Manager Tewes stated that we have been taking the issue of perchlorate very seriously, and can reassure the community that the water that is being delivered meets all the safety standards established by the State and Federal government; and that periodic testing is done and the results are reported as soon as they are available. He anticipates that at the next Council meeting on April 23 there will be an opportunity to discuss those perchlorate results, and he invited Ms. Gobin to come back for that meeting, which should fulfill her request.

City Manager Tewes thanked Ms. Halla for her comments on the Dunne Avenue speeding. He will pass those on to the Police Chief for enforcement, and to the Public Works Department. The city has been looking at the iridescent signs, and they agree that these signs do bring the speed limits to the driver's attention.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy requested that items number 3, 6, 11, 12, and 14, 17, 18, 19, 21 and 22 be pulled for comment and separate action.

Action: *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1, 2, 4, 7-10, 13, 15, 16, 20, and 23, as follows:*

Action: *On a motion by Council Member Sellers, and seconded by Council Member Carr, the City Council (4-0-1, with Tate abstaining) **Approved** Consent Calendar 17 – 19, and 22, as follows:*

1. **MARCH 2003 FINANCE & INVESTMENT REPORT**

Action: **Accepted** and **Filed** Report.

2. **RESCHEDULING OF APRIL 2003 GENERAL PLAN AMENDMENT REQUESTS**

Action: **Adopted** a Minute Action to Reschedule the April General Plan Review to July 2003.

3. **DESIGNATION OF VOTING DELEGATE FOR SPECIAL MEETING (MAY 15TH) OF THE LEAGUE OF CALIFORNIA CITIES GENERAL ASSEMBLY**

Action: *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council unanimously (5-0) 1) **Appointed** Mayor Kennedy to serve as Voting Delegate and Council Member Chang to serve as an Alternate to the League of California Cities General*

*Assembly Special Meeting of May 15, 2003; and 2) **Directed** the City Clerk to Execute and Return the Voting Delegate Form to the League's Office.*

4. **TECHNICAL REVISION TO THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ANNUAL ALLOCATION (FY2003-2004)**

***Action:** 1) **Amended** and **Adopted** Resolution No. 5661, Amended for the Allocation of Fiscal Year 2003-2004 Federal CDBG Funds; and 2) **Authorized** the City Manager to do Everything Necessary for the Implementation of the CDBG Program, Including Processing Any Amendments and Execution of All Required Contracts.*

5. **AGREEMENT WITH THE LAW FIRM OF HATCH AND PARENT**

***Action:** **Authorized** the City Manager to Execute an Agreement with the Law Firm of Hatch & Parent.*

6. **EMPLOYMENT AGREEMENTS WITH CITY MANAGER AND CITY ATTORNEY**

Mayor Kennedy commented that he wanted to let the public know the actions being taken by the City Manager and the City Attorney on a voluntary basis to help ease the budget difficulties of the City. He noted that they have both offered to defer the salary increases due to them as part of their contracts, and thanked them for this good and honorable thing they are doing.

***Action:** On a motion by Council Member Tate, and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Amendments to the Employment Agreements for the City Manager and City Attorney to Defer Salary Adjustments.*

7. **ACCEPTANCE OF PUBLIC IMPROVEMENTS FOR WEST MIDDLE-ROCHA**

***Action:** 1) **Adopted** Resolution No. 5664, Accepting the Public Improvements for West Middle-Rocha; and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.*

8. **APPROVE THE FINAL MAP FOR CENTRAL PARK PHASE VI (TRACT 9475)**

***Action:** **Authorized** the Recordation of the Map, Following Recordation of the Development Improvement Agreement.*

9. **AWARD OF CONTRACT FOR CONSTRUCTION OF BUTTERFIELD BOULEVARD SEWER TRUNK PROJECT**

***Action:** **Awarded** Contract to California Trenchless, Inc. for the Construction of the Butterfield Boulevard Sewer Trunk Project in the Amount of \$291,882.00.*

10. **FINAL MAP ACCEPTANCE FOR MONTE VISTA PHASE III (TRACT 9478)**

***Action:** 1) **Approved** the Final Map, Subdivision Agreement, and Improvement Plans; 2) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 3) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.*

11. **ACCEPTANCE OF CONSTRUCTION OF THE WARREN/HALE/NOB HILL TERRACE STREET IMPROVEMENT PROJECT**

Council Member Sellers noted that this item came before the Council five years ago, and it has taken some hard work on the part of the Public Works staff to rectify one of the most poorly paved areas of the city, and he wanted to acknowledge their hard work and successful completion of the project.

Action: *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council unanimously (5-0) 1) **Accepted** as Complete the Construction of the Warren/Hale/Nob Hill Terrace Street Improvement Project in the Final Amount of \$625,281.00; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*

12. **UPDATE ON DEVELOPMENT PROCESSING SERVICES STUDY IMPLEMENTATION**

Council Member Carr stated that he wanted to draw the Council's attention to the fact that the City has already implemented the vast majority of the 39 suggested actions to improve the City's development processing services.

Assistant to the City Manager Dile reported that most of the easiest recommendations and some of those which have the most profound impact on the customers have been implemented, or will be implemented within the next six months. Some were deferred, primarily due to budget reasons, such as the hiring freeze, and cutback on non-essential capital expenditures. Those items with a longer time line are still on track for future implementation. She stated that we are pleased with the progress at this point, and plan to report back to the Council again in the fall.

Council Member Carr noted that there are several of us who have been working on improving development processes in the City, and within six months, 29 of the 39 recommendations will be completed, so we are well on the way to improving services for our customers in Morgan Hill.

Action: *On a motion by Council Member Tate, and seconded by Council Member Carr, the City Council unanimously (5-0) 1) **Accepted Report** on the Implementation of Development Processing Service Recommendations; and 2.) **Directed** Staff to Report Back on Implementation Status in October 2003.*

13. **COUNTYWIDE AB 939 IMPLEMENTATION FEE**

Action: ***Directed** Staff to Provide Comments to the County.*

14. **ANNUAL REPORT ON ADVANCED LIFE SUPPORT SERVICES AND RENEWAL OF CONTRACT**

Council Member Carr noted that he wanted to point out what great response time we are receiving from ALS.

Assistant to the City Manager Dile reported that when we entered into our contract with them two years ago, the goal was to ensure that there would be dedicated advanced life support services at all times in Morgan Hill. The contract was designed to guarantee an even better response time than what we were already receiving from the County. They have more than adequately met that, not only in this year, but in prior years.

Council Member Carr noted that it was important to note that the ALS services in place in the community are far exceeding what was hoped for when they were put into place, and all those who are working hard to make sure those goals are met should be commended for their hard work.

Action: *On a motion by Council Member Carr, and seconded by Council Member Sellers, the City Council unanimously (5-0) **Accepted** Report from Santa Clara County Fire Department for Advanced Life Support (ALS) Services From April 1, 2002 to February 28, 2003; Thereby Renewing ALS Services for Fiscal Year 2003-2004.*

15. ADOPT ORDINANCE NO. 1612, NEW SERIES

Action: ***Waived** the Reading, and **Adopted** Ordinance No. 1612, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL REPEALING CHAPTER 15.44 (Fire Prevention Code) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL, AND ADOPTING CHAPTER 15.44 (Fire Prevention Code) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL, THEREBY ADOPTING BY REFERENCE AS THE FIRE CODE OF THE CITY OF MORGAN HILL THE TEXT OF THE 2001 CALIFORNIA FIRE CODE, AND THE 2000 EDITION OF THE UNIFORM FIRE CODE AS PUBLISHED BY THE WESTERN FIRE CHIEFS ASSOCIATION, INCLUDING APPENDICES I-C, II-A, II-B, II-C, II-D, II-I, II-J, III-A, III-B, III-C, III-D, IV-A, V-A, VI-A, VI-B, VI-C AND VI-J, AS AMENDED BY THE STATE OF CALIFORNIA, EXCEPT SUCH PORTIONS AS ARE HEREINAFTER DELETED, MODIFIED OR AMENDED REGARDING FIRE PREVENTION AND TOXIC GASES.*

16. ADOPT ORDINANCE NO. 1613, NEW SERIES

Action: ***Waived** the Reading, and **Adopted** Ordinance No. 1612, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DELETING CHAPTER 2.48 (Personnel Commission) OF TITLE 2 (Administration and Personnel) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL ESTABLISHING THE PERSONNEL COMMISSION.*

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17. **APPROVED SPECIAL CITY COUNCIL MEETING MINUTES OF MARCH 26, 2003 REGARDING ABAG-MTC MERGER**
 18. **APPROVED SPECIAL CITY COUNCIL MEETING MINUTES OF MARCH 26, 2003 REGARDING CHANNEL LINEUP CHANGE**
 19. **APPROVED SPECIAL CITY COUNCIL CLOSED SESSION MEETING MINUTES OF MARCH 27, 2003**
 20. **APPROVED SPECIAL CITY COUNCIL COURTHOUSE WORKSHOP MEETING MINUTES OF MARCH 27, 2003**

Redevelopment Agency Action

CONSENT CALENDAR:

21. TRAIN DEPOT BUILDING RENTAL

Council Member Sellers commented that he concurred with the staff report, and offered his assistance and expertise in working out the final contract. He is excited about the prospect and feels it is long overdue.

Mayor Kennedy noted the location of the train depot and the construction of pedestrian crossing over tracks. This has been a long term project to connect the downtown to those who use Caltrain and the parking lot on the East side of the tracks. He is very pleased that this is finally happening.

Council Member Chang commented that she considers this a great establishment.

Action: On a motion by Agency Member Tate, and seconded by Agency Member Sellers, the Agency Board unanimously (5-0) ***Directed*** Staff to Negotiate a Rental Agreement for the City's Train Depot Building with Brett and Lynn Susidko, dba Café Y'a Bon An Espresso Bar, LLC.

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

22. **APPROVED SPECIAL AND REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF MARCH 26, 2003**
23. **APPROVED SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF APRIL 2, 2003**

City Council Action

PUBLIC HEARINGS:

24. DEVELOPMENT AGREEMENT AMENDMENT DAA 00-09: LLAGAS-DELCO AND DAA 00-10: HALE-DELCO

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing.

Dick Oliver stated that he was present as the developer to answer any questions the Council may have. The Council had not questions for Mr. Oliver.

No other comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate, and seconded by Council Member Sellers, the Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1614, New Series for Development Agreement Amendment, DAA-00-09: Llagas-Delco.*

Action: *On a motion by Council Member Tate, and seconded by Council Member Sellers, the Council **Introduced** Ordinance No. 1614, New Series, by Title, as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1523, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT TO INCORPORATE AN EXCEPTION TO LOSS OF BUILDING ALLOCATION FOR APPLICATION MP 00-09: LLAGAS-DELCO. (APN 764-32-005), by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

Action: *On a motion by Council Member Tate, and seconded by Council Member Sellers, the Council unanimously (5-0) **Waived** the Reading in Full Ordinance No. 1615, New Series for Development Agreement Amendment, DAA-00-10: Hale-Delco.*

Action: *On a motion by Council Member Tate, and seconded by Council Member Sellers, the Council **Introduced** Ordinance No. 1615, New Series, by Title, as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1523, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT TO INCORPORATE AN EXCEPTION TO LOSS OF BUILDING ALLOCATION FOR APPLICATION MP 00-10: HALE -DELCO (APNS 764-32-012 & 013), by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

City Council Action

OTHER BUSINESS:

25. AQUATICS COMPLEX OPERATING MODEL

Senior Project Manager Dumas presented the staff report on behalf of the Aquatics Complex Sub-Committee.

Mayor Kennedy, as a member of the Sub-committee, reported that the sub-committee met on several occasions, and considered the various alternatives presented to them. The one proposal that they are recommending appeared to be the most favorable. He stated the concern about leasing out the six acre site to an outside company was that it would be inconsistent with the agreement the City had with the property owner. The proposal included what had been described as a mini-Raging Waters type of facility that would draw many visitors from the entire region. It would be under the control of the outside company, and would be much more of a recreational facility than was originally envisioned for the site. Also there had been four other large water slide projects of this type previously proposed for the north end of Morgan Hill, which had been opposed by many of the local residents because of concern about noise and visual aesthetics. So, the sub-committee ruled out that option because it was too inconsistent with what they had been working on.

Mayor Kennedy stated they also studied contracting out to an entity that would do the whole project, but as they reviewed this they determined that it would take more time to develop that operating model, and there was not enough time to proceed with that model.

Mayor Kennedy reported that the sub-committee determined that by having the City operate the facility initially, experience would be gained regarding operating costs and what it takes to operate such a facility. The proposed combined operation with the Aquatic Foundation, which was the only organization willing to contract for this type of service, would give the City insight into how well that organization is able to operate such a facility. He stated that the sub-committee felt that the costs presented are realistic, and may even be conservative. Reducing the months of winter operation can help cut back on the facility costs.

Council Member Carr, also a member of the Sub-committee, reported that the recommendations of the Sub-committee are based around three ideals:

- 1) Design of a center for the greatest community benefit; both recreation and competition. Some of the very few proposals they received from outside groups interested in operating the center had either drastic, or in some cases minor changes, to the design and the sub-committee felt that it was already designed for the created community benefit, and they wanted to stick with that concept.

2) Accountability to be with the City, and not with some outside operator, at least at the beginning. The City should make the decision to operate the facility for at least the first year. This gives the City the opportunity to evaluate operations, and possibly change that model for the future.

3) Maximize return on the investment and lower risk. This is where the hybrid model came in. The provision of greatest community benefit is to provide both recreation and competition uses. The reality is that the recreation facilities will not be utilized in the winter months because it will be too cold. Because the Aquatics Foundation has expertise in the area of competition, the sub-committee felt it would be a good idea to try and design a model that would allow the City to work with them on how to keep the facility open for competition purposes on a year round basis.

Council Member Carr also stated that there was a great deal of time spent studying this to get a true understanding of the issues involved. He stated that the cost figures are conservative, and that is what they should be when thinking of this type of project.

Council Member Chang asked how many months of the year will the City operate the Center.

Mayor Kennedy responded that the basic recreational months are the months of May, June, July, August and September. These months typically have the best weather and the demand for a recreation facility is the greatest. The other months are when the competition pools would be more expensive to operate, and the facility must rely on swim teams, swim meets, competition, water polo and other types of competitive activities.

Council Member Carr concurred. He restated that SMG had presented operating models of 3, 9, and 12 months. At three months it would actually bring in a little bit of income to the City. With a little bit of work and being aggressive, the City could break even with a four month window. The other eight months would be primarily competition time for the Center, and not recreation time, so the needs of those other eight months would need to be negotiated to determine what operations are required for the Center to be open for competition uses, and whether the Aquatic Foundation or the City would be running the Center for those months.

Council Member Chang asked for clarification as to whether the citizens would have access to the facility during the months that are considered to be non-recreational months.

Council Member Carr stated that he believes so, but that it needs to be determined whether it makes sense to keep the recreation pool open when it is rainy and cold. It needs to be determined what the access Morgan Hill citizens will be seeking during those months; perhaps lap swimming or Masters Swimming, or kids in the swim club. Morgan Hill citizens will not be limited in their access, but their access will be based on what they actually want to be doing at that time of year and will be focused more towards teams, competition events and fitness; and it needs to be determined how to keep those uses open year round.

Council Member Chang asked if during the non-recreation months the Aquatics Foundation will be taking full responsibility for the operation costs.

Mayor Kennedy stated that it will be up to the City Manager to negotiate an agreement with the Aquatics Foundation.

City Manager Tewes stated that he has spoken with the President of the Aquatics Foundation to make sure they were in agreement with the recommendation that is being presented tonight, and they were willing to negotiate; but actual negotiations have not yet begun. The goal of the negotiations would be to provide the maximum number of months that the facility could remain open, and to recover the City's marginal costs of operations during those months.

Council Member Carr responded that Council Member Chang's scenario is one of many, and the negotiations will continue to work through.

Council Member Tate stated that he agrees with the recommendation predicated on the fact that the city is going to build an aquatic center, but that he has two problems. He stated that he questions the timing, because he does not think it is prudent in the current economic environment to proceed with this project this quickly. He stated that if we were going to do it, this is the right model. He stated that the projections on revenue are supposed to be conservative, but the times we are in make it questionable that we will meet these projections. He feels it is the time to step back and wait to see what is going to happen with the economy before going forward with this project.

Council Member Tate's second issue is the assumption that the Aquatics Center is the number one priority. He reviewed the minutes for March, and felt that Council Member Carr make a very good argument for taking the RDA projects and re-prioritizing them as a whole, which would include the Aquatics Center. He stated he does not see how the City is going to get the Senior and Youth Centers built; and he has been receiving a lot of feedback from the both the seniors and youth about their concerns that the facility to meet their needs will not be built. He stated that swimming is number one on his personal list, but does not know that it is number one on the community's list.

Council Member Tate also stated that he is concerned about, and disagrees with, a statement in the staff report that when the Aquatic Center is operating it may require some subsidy. He stated that if we are going to subsidize the Aquatics Foundation for running the pool for competition only, then we would have to subsidize other competitive sports. He stated that the City must insist that the Aquatic Foundation pay their full costs during the time they are operating the facility for competition only. That is the only item he disagrees with in the report. He thinks the approach is absolutely right, but he would not be supporting this item or the next item on the agenda because of the timing and prioritization issues.

Council Member Sellers stated it was not clear to him whether the negotiations with the Aquatics Foundation, which he agrees should proceed, will be returning to Council for approval.

City Manager Tewes reassured the Council that if they adopt the recommendation of the sub-committee, then negotiations would begin, and the formal contract would be brought before the council for approval.

Council Member Sellers concurred with Council Member Tate that it would be imprudent to proceed with the assumption that the City would be providing a subsidy, because he does not know that would be the case; and it would not be a good faith effort to proceed with that assumption.

Council Member Sellers also stated that he is concerned about the \$35,000 amount for start-up expenses. Based on the experience with the Community Center start-up, he feels that the marketing efforts are in direct correlation to the potential for success of the facility when it opens. He would like to make sure that enough is budgeted for this activity, because the benefits to the success are so direct.

City Manager Tewes reported that the estimated start-up costs were provided by the Recreation and Community Services Division Manager Spier, and was based on her experience with the funding for the opening of the Community and Cultural Center.

Council Member Sellers asked that Ms. Spier report back to the Council on this item as the opening gets closer, so if there is more funding needed it can be allocated in order to increase the chances of a successful marketing campaign.

Mayor Kennedy addressed the concerns raised by Council Member Tate that the City not be unfair to other groups in subsidizing the Aquatics Foundation. He stated that if there is a subsidy for competitive swimming, that the facility be open to the general public for recreation use as well; and that this would be part of the negotiated agreement. He stated that some subsidy is appropriate to provide this type of facility for the community.

Council Member Chang stated that she wants to find out the ultimate goal amount for the subsidy. She likes the idea of working with the Aquatic Foundation, and agrees that there are times when the City should subsidize certain community operations; with the Community Center being a prime example. But with the current economic times, and the City Manager and City Attorney taking a reduction in salary in order to meet the budget, she will have a problem supporting the kinds of subsidies outlined in Option 2 of the staff report. Asked for elaboration of what subsidy the sub-committee had in mind.

Mayor Kennedy responded that he favors Scenario 3, the nine-month operation; and that this and Scenario 4 are the two most appropriate choices. Scenario 2 is a twelve-month operating period and is the most costly in terms of operating expenses. The most favorable is Scenario 3, with subsidies dropping each of the first four years.

Council Member Carr stated that the numbers presented by SMG need to be kept in perspective. Scenario 2 is the worst case scenario. It is a twelve month, City-only operation, and contains no bid alternates. This model was not suggested as the model of choice by the sub-committee. He pointed out that each of the scenarios presented are the “worst case” versions. Even Scenario 3, which may be the best one, has the City operating the center for nine months of the year. Under sub-committee’s recommendation, negotiations are to find the time frame to keep the center open enough to cover the marginal costs and have the center open for the purposes originally envisioned at the most acceptable cost and least risk to the City.

Council Member Chang agreed that they all want the best for the City and all want the Aquatic Center; but she is asking for a firm bottom line on what the subsidy amount will be per year?

Council Member Carr responded that at this time there is no answer to that question because negotiations have not yet occurred. When SMG assembled their report, they were not asked to include scenarios for hybrid models or partnerships with local foundations that have the ability to raise funds on their own and bring in outside resources to support the facility. There is nothing in the current staff report that reflects those possibilities, and there will not be an answer until negotiations have been undertaken.

Council Member Chang explained that she is not looking for a firm answer, but only for a goal.

Mayor Kennedy stated that he believes the goal of the Aquatics Center is to provide the maximum amount of public access for both recreational and competitive swimming and water sports at the minimum cost to the City. He stated that he does not mean zero subsidies. That is the general goal and at this point the goal needs to be general.

Council Member Chang disagreed, and stated that for the benefit of the taxpayer, there needs to be some kind of a goal. For her \$100,000 a year subsidy is probably a good amount for her, but would not go any more than that.

Council Member Carr asked Council Member Chang if her goal was a maximum City subsidy would be \$100,000, while maximizing the amount of time the facility was open for Morgan Hill residents.

Council Member Chang responded that she prefers a zero subsidy, but at this moment she is willing to subsidize the Aquatic Center for \$100,000 per year; and she felt that was giving a lot of leeway and is workable. She stated that this is a reasonable goal; and wants to have a number set somewhere so that negotiations don't produce a \$300,000 a year deficit.

Mayor Kennedy stated that the sub-committee is not prepared to be that specific in setting a goal tonight. He stated that he has a clear understanding of Council Member Chang's position, and that after the negotiations with the Aquatic Center Foundation, that may be achievable. Stated that the information before the Council gives sufficient information on alternative operations that the Council can move forward with this; recognizing that there is always the capability to operate the facility at a point of breaking even if the City chooses to do that.

Mayor Kennedy stated that he believes there is a very broad public need for both recreational and competitive swimming facilities. He stated that there has been a lot of input from citizens about the desire to see this facility built. He also stated that there are many good reasons to build it, including economic reasons, because it will bring in revenue to the community through restaurants and hotel use by visitors to the community. He feels that this is a good time because it helps to infuse revenue potential into the city overall by providing a stimulus for tourism. He feels the timing is right because the City will be able to get some very attractive bids submitted for the project because of the downturn in the economy.

Council Member Chang asked when the negotiations will be completed and is it possible to have the partnership negotiation completed before the City goes out to bid in June.

City Manager Tewes responded that the City does have the option to operate the Center for as long the Council desires. His own goal is to delay the beginning of the negotiations until the services of the Aquatic Center Director are retained toward the end of the current calendar year. He stated that he does not anticipate lengthy negotiations, so that there would be a decision well before the facility opened; but it is important to both the City and the Foundation to understand the capabilities of each other as they develop the partnership. He stated he feels more comfortable holding those negotiations after the hiring of the full time Aquatics Director on staff.

Council Member Chang stated that she will not be able to accept a \$300,000 deficit, and she will not be able to support going out to bid until she can be reassured that the amount will be \$100,000 or less, or even a zero subsidy. Then she will be able to support the project.

Council Member Sellers noted that the public comments have not yet been heard, and asked the Mayor if the public comments would be opened before further discussion by the Council.

Mayor Kennedy opened the floor to public comment.

Ms. Martine Kapetanac spoke in favor of the Aquatic Center. She stated that this is a business that will be run by the City, but it is also a service that is owed to the community. It will be there for recreation purposes, just like a park, and when you are building something like this you never can know if it will make or lose money. When you start a business, you can expect to be in the red for the first five years. Feels that the City needs to look at this not only as a business, but also as a service. The Aquatics Foundation will do their best to market the facility. Some community members have stressed that they think it should remain within the community, but that closes the doors to options for bringing in other revenue. She feels that it should be available to the tri-county area to increase options for revenue.

She also stated that because the calendar year is being divided between recreation and competition, the public is getting the impression that the facility won't be available for them year round, and that is not true. She stated there is a need to make the public aware that they will be able to swim any time they want, and not just during the warm season. This facility is not being built just for the swim teams. She hopes the Council will keep these issues in mind during their discussions.

Mr. Geno Acevedo spoke in favor. Requested reaffirmation of decisions made in the past regarding the minimum depth of the pools, which would affect their ability to market the facility. Feels that the architect is under the impression that the 50 meter pool would be 4-1/2 foot depth, and he was under the impression that the Council had voted that it would be a 7 foot depth.

Mayor Kennedy stated that the design is for both depths.

Mr. Acevedo stated that Council Member Carr made some very good arguments, and that he is in support of all the arguments made by Council Member Carr. When the Aquatic Foundation negotiates, they will negotiate in good faith with the goal to make the Center operate either at zero cost to the City, or as low a cost as possible, depending on the overall goals set during the negotiations.

No further comments being offered, Mayor Kennedy closed the public comment.

Council Member Tate stated that he wanted to respond to Mayor Kennedy's argument that this is a fortuitous time for going to bid to get the lowest cost. He wanted to remind the Council that just three months ago, the City added \$2.7 million dollars to the budget; and when they get to Agenda Item 26 for going to bid on the Aquatic Center, the staff report has a clear statement that their preliminary estimates indicate that the previous estimates of pool costs could be low. He sees no indication that costs are going down, but that the costs are going up just like on the Community Center. He would be more comfortable if we were in more certain times.

Mayor Kennedy stated that the Aquatic Subcommittee has met on that issue and the design will be modified to bring it within the budget. He stated that this was guaranteed.

Council Member Chang asked why the hybrid model was chosen rather than have the Aquatic Foundation operate the entire facility.

Mayor Kennedy stated that the Aquatic Center Foundation specializes in competitive swimming. City Recreational staff have expertise in recreational uses. This model actually uses the best expertise of both.

Council Member Carr stated that we have set the precedent that the City wants to operate the facilities the City is building, and not have them operated by another agency. The subcommittee has presented ideas that are about ways of keeping the Center open for the entire community for the longest period of the year. When he speaks of the recreation uses being closed for part of the year, he is speaking of things like the slides and splash ponds which would be too cold to use in the winter months. He is not saying that you have to be a competitive swimmer to use the pools in the winter, but does not feel that we should keep the recreational areas traditionally used by children open during the winter months on the chance that one child may want to come and use them. The City should not keep pools open that people are not going to be using. The 50 meter pool would be open for recreational, fitness, or competitive swimming all year. The Aquatic Foundation's expertise will be put to use in keeping the pools open that people will use through competitions. Whether the pools will be open 9 or 12 months will need to be negotiated at a later date. The Council tonight is being asked to approve the Subcommittee's recommendation to go forward with the negotiation on those types of parameters for the operation of the facility.

Mayor Kennedy explained that the four scenarios they are reviewing are all City operations. There is no overlay showing what this operation will cost, but he expects it would be less costly than any of the four scenarios presented. The recreational pool with the water slide is set up for use in the summer months, and is just too cold for use in the winter months. The splash pond is the same situation. The training

pool and the 50 meter pool would be for recreational swimming, fitness, and competition and open all year.

City Manager Tewes stated that the hybrid model would cost less than any outlined in the staff report.

Council Member Sellers stated that this issue was before the Council this evening so that decisions can be made, and so the general concept can be put in place to allow the project to proceed on several fronts. His concern is that they are being asked to approve in general terms a budget for the 2003-2004 budget before they have approved the 2003-2004 budget. He asked the City Manager if the budget discussions determine that there needs to be a change, is the Council creating a problem by doing this tonight.

City Manager Tewes stated that the Council has adopted the Aquatic Center as the number one priority project, and has asked that construction be accelerated in order to be open on May 31, 2004. In order to meet that goal, staff and marketing expenses need to be incurred next fiscal year; and based on Council direction in that regard, this will be included in the budget. All the budget cuts will have to be made from other areas. The City is not authorized to spend the money until the budget is adopted by the Council.

Council Member Sellers further commented on the project that there has been significant early criticism that this was going to be a regional project, bringing in people from other areas, and the focus would be regional. He has known this was not correct when it was first stated, and it has been stated repeatedly, and it is still wrong. This proposal tonight is concrete evidence that this was the wrong assumption. The Aquatics Subcommittee has presented a scenario that assumes local control, local focus, local orientation; understanding that there needs to be some broader reach to open things up a little bit, but the main focus is on the local residents needs being met.

Council Member Sellers stated he is confident to proceed with this project. He feels that promises have been made to the community and it is time to move forward to fulfill those promises. He does not place this in a higher priority than the Indoor Recreation Center, because in his mind they are both highest priority. The opportunity to proceed on the Aquatics Center is now before the Council, and that is the project that is the one that should be looked at now; and as soon as the opportunity to proceed on the Indoor Recreation Center presents itself he will be pushing to move forward on that.

He also feels confident that the City has the resources to proceed on both projects and meet all the commitments made to the RDA. On this project, the numbers have been consistently around a \$250,000 subsidy for at least the first year. He knows that the money is available in the excessive reserves held by the City Council. He will only approve this tonight, subject to taking those funds out of the excessive reserves. Morgan Hill has higher reserves than any other city in the County or the region, and that will continue to be the case even if they are lowered to 40%; and we are only talking about lowering it to 40% in five years. He feels it is an abrogation of their duties to sit on that kind of money, and then talk about the kind of cuts they are going to be talking about, and/or not proceeding on what he considers to be a vital project. He is predicating his support on the budget discussion to be held a month from now, where the Council will be looking at that; and he is going to say that this \$250,000 needs to come out of

the reserves. He will withdraw his support if the Council continues to feel that the City needs to have such a high reserve policy.

He also wants to increase the marketing funds, because he thinks that will increase the benefits.

And finally, he will find it hard to support the Aquatics Foundation moving forward if there needs to be a subsidy for that portion. He stated that Martine was absolutely right that any business start-up is initially in the red, so he would like to look at a long term plan where if the Aquatic Foundation is required to provide additional revenue in the first few years in order to achieve their and the City's goals, that it be looked at long term so that the income derived in subsequent years would more than offset that. He asked the Committee to keep that in mind as they negotiate with the Aquatic Foundation because he would have trouble subsidizing that portion given the City's financial situation. He would rather have the Master swimmers pay an extra dollar for each visit or something to make sure that the City is not subsidizing during those months during the initial years.

Council Member Chang seconded that motion for discussion. She asked for clarification of his point that we would use the reserves for the start up cost, but there would be no subsidy later on.

Council Member Sellers responded that all the models require a subsidy, even though he does not call it a subsidy. He does not call police services a subsidy to the Police Department. He is comfortable adding another \$100,000, or that range they are talking about, to the annual operating costs of the Aquatic Center; and by reducing the 40% reserve level we can adequately include that annual subsidy for the next few years.

Council Member Chang stated that the reserve level issue will have to be visited again. She does not mind using the reserve for the start up costs, but is concerned about the operational costs from year to year. She asked if he is thinking it will be approximately \$100,000 per year.

Council Member Sellers stated he does not think in such specific terms. He was providing his input of his thoughts on what the subcommittee should consider when setting their goals, and is not comfortable giving a specific number because it is premature.

Council Member Tate stated he agrees with Council Member Sellers on the reserve levels. He feels a general philosophy for the use of the reserves is to use it for this type of thing. However, he wanted to remind the Council that the City Manager told them earlier this evening that things are planned out which will allow for a soft budget landing with some assumptions about what will be happening from the State that we will know a lot more about in a year's time, and that might affect the 40% reserve level as well.

Council Member Carr asked for clarification on his motion, as to whether he meant to dip into the 40% reserves for the start up costs, so as not to affect the soft landing of the budget.

Council Member Tate stated that if it is a hard landing and not a soft landing, the 40% reserve has already been affected. That is his precaution.

Council Member Sellers stated that he feels that when looking back at the history of the community and the State, even if we have the hardest landing conceivable, the City is adequately prepared to deal with that.

Council Member Tate asked that the different items up for action be considered individually.

Action: *On a motion by Council Member Sellers, and seconded by Council Member Tate, the City Council unanimously (5-0) **Accepted** the Report from Sub-Committee on Model for Operation and Maintenance of Aquatics Complex Based on First Year of Operation.*

Action: *Council Member Sellers made a motion, seconded by Council Member Chang to approve the Sub-committee's recommendation to Negotiate a Partnership Operating Model Between the Aquatic Foundation, Inc. and the City for the Off-Season Period, with the Understanding that the Partnership will not Require Additional City Funding Subsidy.*

Council Member Tate requested discussion of this motion. He stated he totally supports the motion, but does not support doing it now. He would support doing it next year.

Council Member Carr stated that the vote clearly implies an opening date of May 31, 2004.

Council Member Tate asked that this be made part of the motion.

Action: *At the request of Council Member Tate, this motion was amended by Council Member Sellers to include an Opening Date of May 31, 2004. Council Member Chang withdrew her second to this amended motion.*

Council Member Chang stated that the addition of the date makes it difficult for her to support the motion, and she withdrew her second.

Council Member Tate stated that he could not support the motion with the addition of the date. But he felt that the subcommittee clarified that they implied the date, so he felt it needed to be part of the motion.

Action: *On a motion by Council Member Sellers, and seconded by Council Member Tate , the City Council **Approved** (4-1-1, Tate No; Chang; Abstaining) the Sub-Committee's recommendation to Negotiate a Partnership Operating Model Between the Aquatic Foundation, Inc. and the City for the Off-Season Period, with the Understanding that the Partnership will not Require Additional City Funding Subsidy; and with an Opening Date of May 31, 2004.*

Action: *On a motion by Council Member Sellers, and seconded by Council Member Carr, the City Council (Voted 3-2, with Tate and Chang voting No) **Directed** Staff to Include the*

Start-Up Costs for the Aquatics Complex in the 2003-2004 Fiscal Year Budget, with These Funds to be Taken From the 40% Reserves.

Council Member Chang commented that she would have voted for it, if it was just taking out from the reserve; but the 40% reserve is an issue that was previously discussed for a long time. The policy was set by the Council, and it is inappropriate to discuss the taking of these funds from the 40% reserve at this time. She would have happily voted for the funds to be taken from the reserve, because there is 30% of the reserve in the budget right now; and feels that this is doing it incorrectly.

Action: *On a motion by Council Member Sellers, and seconded by Council Member Carr, the City Council (Vote: 4-1, with Tate voting No) **Directed** Staff to Begin Recruitment for an Aquatics Manager, with Hiring of Staff to Begin in November 2003.*

26. MORGAN HILL AQUATICS COMPLEX POOL BID PACKAGE AND REQUEST FOR BID AUTHORIZATION

Senior Project Manager Dumas presented the staff report.

Council Member Chang asked when the Council will know the overall costs for this project.

Mr. Dumas responded that the bids for the pools are scheduled for around May 22, 2003; and approximately July 1, 2003, the general construction bids for the entire remainder of the project will be received. He explained that if they wait until July 1 to bid the entire package, then the contract will have to be negotiated with the general contractor; and then once the contract is in place, then the pool subcontractor will start his shop drawings and his architectural approval. This would delay the start of digging of the pools by about 1-1/2 months, which moves the pool work more into the winter months where there is a chance of more rain delays. The reason they are bidding it separately is to try and build as much pool work as they can this summer.

Council Member Chang asked what the Council will do if on July 1, the entire project is over \$13 million.

Mr. Dumas stated that the project would be reviewed to determine what single elements could be pulled out and value engineered to pull some costs out. Some of the design elements, such as sun screens, wind screens, solar heating, etc., could be pulled out and put back in at a later date.

Mayor Kennedy asked if in the public sector negotiations with the low bidder can be held to remove items out of the project.

City Manager Tewes stated that this is not possible in the public sector. The City is required to award the bid to the lowest responsible bidder, or to reject all bids and go out to bid again. With the Community Center, it was predicted that the cost at the bid level would exceed the budget, and we had reassurances that the contractor would negotiate with us in good faith following award of the bid to

negotiate change orders which might reduce the costs; and we were able to do that. But the City cannot negotiate prior to the award of the bid.

City Attorney Leichter stated that in the public sector you cannot pull items which have been included as part of the bid. It would have to be re-bid or put in the bid as a bid alternate.

Mayor Kennedy noted that at this point there are about 3 or 4 bid alternates that could be removed. Perhaps we might want to add something else as a bid alternate to provide flexibility should we be faced with that type of situation. We could choose not to proceed with the bid alternates (i.e., solar heating, or one of the pools) or some major feature.

Mr. Dumas explained that he did not mean that the item would be pulled out after the bid. He meant that once the pool bids are received they would have a more real time cost. At that time, they would be able to value engineer the project and put in bid alternates that could be bid separately.

Mayor Kennedy opened the floor to public comment.

No comments being offered, Mayor Kennedy closed the public comment.

Council Member Sellers noted that most of the questions were answered in the staff report.

Council Member Chang stated that she feels very uncomfortable about the piece meal approach to this project.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council (4-0-1, with Tate voting No) **Authorized** Staff to Proceed with the Bidding for the Aquatics Complex Pools and Rough Grading.*

27. CONTINUED DISCUSSION OF SCHEDULING WORKSHOPS FOR IDENTIFIED TOPICS/COMMISSION INTERVIEWS

City Manager Tewes presented the staff report. He reported that the Director of Public Works will be unavailable on April 23 to present the issue of the City's domestic water system, and asked if it could be scheduled as part of the workshop process on April 30. Council agreed.

Council Member Sellers stated that he feels the four items listed as topics for discussion under the 2003 Council Goals fall under a longer term projects, and does not feel that there needs to be a specific date identified for discussion. The Council already has so much on their schedule over the next few months, that he is a little anxious about adding more any projects further out. He would like to wait until after the budget is passed, and then in June go over that list again and determine a schedule at that time.

Council Member Sellers asked about the Economic Development Strategy subcommittee and the status of their report back to the Council.

Council Member Tate responded that the subcommittee is almost ready for a presentation, and had been planning to bring it to the April 23 meeting.

City Manager Tewes suggested that the report be distributed at the meeting of April 23, and brought back for discussion on May 7, when Council Member Tate will have returned. During the intervening time period, the recommended strategy could be shared with other groups in the community.

Council Member Tate agreed that this was a good idea.

Council Member Carr stated that he wanted to have the 2003 Council Goal items discussed prior to adoption of the budget, but he does not see how that can be done now. He hoped that the Council could discuss how to schedule workshops in the future. Perhaps do one or two workshops a month, and try to get them on our calendars now, even if they don't actually get held, at least they would be on the calendars in advance. It is a problem that they have all these wonderful ideas, but now can't find time to schedule them. Perhaps set aside two hours before on the day of the regular meetings when they will hold a workshop. The topic can be set later, but just set aside the two hours, so that when the Council sets their goals at their retreats they will be able to get them on set dates throughout the year on the calendar. Council Member Carr suggested these be scheduled in advance for the year, so there is not this jumble of trying to get things on their schedules as the year progresses.

Council determined that staff should return with suggestions for scheduling two-hour workshops before the 2nd regularly scheduled Council meeting when the agenda is light so they do not have to continue deliberations late into the night; or to hold it from 4 to 6 p.m. on the 2nd Wednesday of the month, but must be ended by 6 p.m.; or the possibility of the 4th Wednesday as an additional alternative.

Action:

*The City Council **Directed** Staff to set the following dates for City Council Workshops:*

- 1) April 30, 2003 – 2 hours for Housing Workshop and 1 hour for staff presentation on City's Domestic Water System.*
- 2) Schedule a time in June, after the Budget is approved, to go over the four items listed for discussion under the 2003 Council goals and see if the Council are ready at that time to set dates for discussion of these topics.*
- 3) Economic Development Strategy will be distributed on April 23, 2003, and brought before the Council for discussion on May 7, 2003.*
- 4) Staff to provide a suggested schedule of workshops, using the following guidelines for scheduling:*
 - a) If the agenda is light, schedule for the hours of 4 – 6 p.m. prior to the 2nd regularly scheduled Council meeting on the third Wednesday of the month.*

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- b) Schedule on the second Wednesday of the month between the hours of 4 – 6 p.m., but must end by 6 p.m.*
c) Schedule on the evening of the 4th Wednesday of the month, as a possible alternative.

Action: *The City Council **Directed** Staff to set the following dates for Commission Interviews:*

- 1) ARB and Planning Commission terms to be extended beyond June 1, 2003, if the City Attorney determines this is feasible, to allow the interviews to take place on July 2 or July 23, 2003.*
- 2) Library and Parks and Recreation Commission interviews will take place on April 23, with interviews continuing on April 30 for applicants who are not available for interviews on April 23, 2003.*
- 3) Council appointed Council Members Carr and Sellers to serve as a sub-committee to conduct interviews for the Mobile Home Rent Commission and report back to the full Council with recommendations for appointments.*

City Council and Redevelopment Agency Action

OTHER BUSINESS:

28. INVESTMENT POLICY UPDATE

Director of Finance and Risk Management Dilles requested that he be allowed to pull this item from the agenda and bring it back to the Council at a later date, due to a potential internal inconsistency in the policy as it exists now that might be compounded with the proposed changes. He believes it is an easy fix, but wants to get facts straight and make certain of it. He proposed to bring it back in May on the same evening that the Finance and Audit Committee meeting is scheduled to meet, to inform the Finance and Audit Committee is familiar for their proposal, and then bring it back to the Council.

Action: *This item pulled from the agenda by the Director of Finance and Risk Management Dilles.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 9:54 P.M.

MINUTES RECORDED AND PREPARED BY:

MOIRA MALONE, DEPUTY CITY CLERK

**CITY OF MORGAN HILL
SPECIAL CITY COUNCIL MEETING
MINUTES – APRIL 23, 2003**

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 7:03 p.m.

ROLL CALL ATTENDANCE

Present: Council Members Carr, Chang, Sellers, Tate and Mayor Kennedy

DECLARATION OF POSTING OF AGENDA

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

The Council deferred this agenda to the conclusion of the Regular Redevelopment Agency/Special City Council meeting.

City Council Action

OTHER BUSINESS:

1. POLICY REGARDING USE OF PROPERTY ADJACENT TO COMMUNITY PARK

Director of Business Assistance and Housing Services Toy presented the staff report, indicating that the City received a request from a circus and carnival groups to use the property adjacent to Community Park (Gunderson property). He indicated that the City does not have policies in place that govern the use of city-owned, non park properties. He noted that in the past, the City allowed the Mushroom Mardi Gras use of the property. Therefore, non profits have been benefiting from the use of the site. He stated that the circus and the carnival are for profit organizations but have indicated that they are willing to work with local non profits to benefit them and follow the City's special permitting process. As there is no current policy in place that governs the use for city-owned property, staff is requesting Council direction on how to proceed. There are some questions about considering any use on the property since the indoor recreation center would commence development within the next two years. The Council could consider limiting the use of the property to local non profits and/or if there is benefit to local non profits. The Council could allow for profit use if they pay a market rate rental fee and follow the special event permit guidelines. He informed the Council that staff asked the for profit organization if they could pay \$5,000 per day for the use of the property. The response was that they would agree to pay \$500 per day and partner with a local non profit. He informed the Council that the circus would like to use the site May 12 and 13 and that the carnival would like to use the site sometime in June or July. He indicated that it would be difficult to state how much a local non profit organization would receive. The carnival indicated that the non profit organization stands to share \$10,000-\$20,000.

Mayor Pro Tempore Chang inquired whether there were neighbors adjacent to the park as it was her recollection that the neighbors expressed concern with a use of the site.

Mr. Toy indicated that there is a residential neighborhood located across the street.

Council Member Sellers said that it did not make sense that the circus/carnival groups were not willing to pay \$5,000 per day for the use of the site to the City but that they would be willing to pay \$10,000-\$12,000 to a non profit organization.

Mr. Toy said that he was not aware of the non profit organization selected. He stated that staff provided the circus/carnival group with a list of local non profits, including the Morgan Hill Community Foundation. He informed the Council that the proposed Council policy options are: 1) allow this type of use by a for profit group as long as they pair up with a local non profit organization; 2) allow the for profit group to use the site if they pay a market rate fee; 3) or not allow any uses. He did not believe that the groups would move forward with the use if they were required to pay \$5,000 per day for the site and partner with a non profit organization.

Council Member Tate felt that it would be a benefit to a non profit agency but expressed concern whether an organization is in fact a non profit organization.

Mayor Kennedy expressed concern that a non profit organization would not truly be benefiting from the partnership and that this would be a way for the carnival group to make money. He supported the review/approval on a case by case basis. He requested that the non profit organization be identified and the revenue they will receive be identified.

Council Member Carr recommended that the Morgan Hill Foundation be selected as the non profit organization to benefit from the partnership.

Mayor Pro Tempore Chang suggested that the Morgan Hill Medical Foundation also be considered as the non profit to benefit.

Mr. Toy informed the Council that the carnival/circus groups have asked for non profit organization recommendations. However, staff has taken a neutral position and provided them with a list of non profit organizations.

Council Member Sellers recommended that for profit organizations partner with non profit organizations that are approved by staff. He did not believe that the Council should limit the non profit organization to the Morgan Hill Community Foundation as he would hate to get into legal issues or a perception of the issue. He noted that there are neighbors located on the other side of Community Park and that he had little doubt that the City would hear from some of these residents when the first activity is held. Therefore, he recommended that the use of the Gunderson site be limited to two per year, in addition to the Mushroom Mardi Gras event.

Mayor Kennedy recommended that staff obtain a report from the circus/carnival groups that identifies how much profit is to be made and how much will be paid to the non profit before staff makes a decision on the use.

Mayor Pro Tempore Chang felt that the City should make more money than the \$500/day per event.

Mr. Toy indicated that the City did not charge a fee to the Mushroom Mardi Gras organization.

City Manager Tewes said that he was only aware of two instances in which city-owned Gunderson property has been used: one in conjunction with the Mushroom Mardi Gras special event permit to use Community Park and the second was for a large company picnic event held at Community Park and that the site was used for overflow parking. The City allowed the use of the Gunderson site by the company for \$500. In this case, the group wants to use the Gunderson property to generate revenue and was not an ancillary use to the Community Park.

Mayor Pro Tempore Chang felt that this was a City Manager prerogative decision.

Mayor Kennedy concurred that the City Manager could approve administratively subject to receiving information to help make a decision.

Action: *It was the consensus of the City Council to **Authorize** the City Manager to administratively approve the use of the Gunderson site by for profit groups, on a case by case basis, subject to the submittal of a report that identifies the revenue to be generated and the amount of revenue the non profit agency would receive from the event. This is to be limited to two events per year, in addition to the Mushroom Mardi Gras event. Staff to approve the local non profit agency that will benefit from the special event. Staff to collect an appropriate fee for the use of the site.*

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the meeting at 11:31 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK

CITY COUNCIL ACTION

MEETING DATE: *APRIL 30, 2003*

ITEM # 5

**A REPORT ON THE OPERATIONS OF THE CITY'S DOMESTIC WATER
SYSTEM**

Recommended Action(s): Information Only (**Note:** No staff report attached. Oral Report to be presented the night of the meeting)



CITY COUNCIL STAFF REPORT

MEETING DATE: *April 30, 2003*

ZONING AMENDMENT APPLICATION, ZA-02-18: COCHRANE - IN-N-OUT BURGER/APPLEBEE'S

RECOMMENDED ACTION(S):

1. Waive the First and Second Reading of Ordinance
2. Introduce Ordinance

EXECUTIVE SUMMARY: The applicant is requesting approval to amend the Tharaldson Planned Unit Development (PUD), located at the northwest quadrant of Cochrane Road and Highway 101. The amendment request includes the following:

1. Construction of a 3,253-sf drive-thru fast food restaurant with outdoor seating, in lieu of a required 8,000-sf sit down restaurant.
2. Replacement of a 6,300-sf sit-down restaurant with a 5,000 to 6,500-sf sit down restaurant.
3. Amendment to the Tharaldson PUD (as contained in Ordinance No. 1475), including but not limited to the permitted uses, placement of the buildings, architectural theme, and landscaping.
4. Exceptions to the city-wide PUD standards (as contained in Chapter 18.30 of the Municipal Code), including the placement of the two restaurants (the PUD requires the buildings to be set forward toward Cochrane Road), encroachment into a required 30-ft landscape buffer, insufficient landscaping, and deviations from the established architectural theme and required design standards.

This item was discussed at the April 23 Council meeting, during which time issues were raised regarding the location of the buildings on-site, the 'franchise architecture' appearance of the buildings, and the reduced landscaping proposed along the site and building perimeters. A motion was made to approve the proposed project as recommended by the Planning Commission with the following modifications to the ordinance: 1) add a new Section 5 establishing a two-year time limit on the PUD amendment approval, 2) modify the 'Defense and Indemnity' clause of the ordinance (Section 8, Condition D) so that it does not expire after the two-year time limit established under the new Section 5, and 3) modify Section 8, Condition G to (a) require the applicant to secure Caltrans approval for the permanent driveway within one year of issuance of building permit for the sit-down restaurant and (b) require the project to be returned to the Planning Commission should Caltrans not approve the encroachment for the permanent driveway and should the interim driveway location pose traffic circulation problems. The original motion did not pass. However, a new motion was made to continue the item to April 30 with direction to staff to modify the ordinance as mentioned above. The purpose for continuing the item was to allow council members the opportunity to meet directly with the applicant to work through unresolved issues. The motion passed 4-1.

Staff has revised the approval ordinance to incorporate the requested changes, and has attached it to this report for the Council's consideration.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing this application.

Agenda Item # 6

Prepared By:

Associate Planner

Approved By:

CDD Director

Submitted By:

City Manager

ORDINANCE NO. 1616, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE THARALDSON PLANNED UNIT DEVELOPMENT (PUD) AND PRECISE DEVELOPMENT PLAN TO REPLACE TWO SIT DOWN RESTAURANTS (6,300 SQUARE FOOT AND 8,000 SQUARE FOOT IN SIZE) WITH A 3,253-SQUARE FOOT DRIVE-THRU FAST FOOD RESTAURANT AND A SIT DOWN RESTAURANT 5,000 TO 6,500 SQUARE FOOT IN SIZE. (APNs 726-33-023 & - 024)(ZA-02-18: COCHRANE-IN-N-OUT BURGER/ APPLEBEE'S)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

- SECTION 1.** General Plan Policy 14a promotes enhancement of the visual integrity of gateways to the City. The proposed project, which is located in a gateway location, is consistent with General Plan Policy 14a. Both restaurants will be subject to review and approval by the City's Architectural Review Board, and views of the drive-thru lane for the fast food restaurant will be mitigated through the installation of landscaping within the Caltrans right-of-way. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed.
- SECTION 4.** The City Council hereby approves a precise development plan as contained in that certain series of documents dated February 24, 2003, on file in the Community Development Department, entitled "In-N-Out Burger Restaurant" prepared by In-N-Out Burger. These documents, as amended by site and architectural review, show the location and sizes of all lots in this development and the location and setbacks of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.
- SECTION 5.** This zoning amendment approval shall remain in effect for two years after final adoption of this ordinance. Should a fast-food restaurant and sit-down

restaurant not be constructed in compliance with the adopted precise development plan and any other conditions imposed by this ordinance and applicable conditions of approval before the end of the two year time limit, this zoning amendment approval shall expire and any amendment to the previous zoning shall be null and void with the exception of paragraph 9(D) below.

SECTION 6. The City Council hereby approves the exceptions to the city-wide PUD development standards listed below for both the sit down and fast food restaurant sites. The Council hereby finds that: A) Approval of the exception is necessary for the preservation and enjoyment of substantial property rights of the applicant; B) The exception will only be approved to the extent necessary for the preservation and enjoyment of the substantial property rights of the applicant; C) The effect of the reduction or elimination of the development standard will be substantially mitigated by the provision of other design features or enhancements to the project; and D) Approval of the exception will not be outweighed by the adverse effects to the public health safety and welfare of persons working or residing in the area.

- A. (§ 18.30.090.A.18) Location of restaurants. The Council hereby approves the location of the sit down and fast food restaurants, as shown on the site plan date stamped Feb. 24, 2003.
- B. (§ 18.30.090.C.4) 30-ft landscape buffer. The Council hereby approves a 27-ft encroachment into the required 30-ft landscape buffer, as shown on the site plan date stamped Feb. 24, 2003. The encroachment into the landscape buffer is necessary to provide the drive thru lane as proposed, and the landscape area will be supplemented by the adjacent Caltrans right-of-way landscaping.
- C. (§ 18.30.090.C.5) 50 percent building perimeter landscaping. The Council recommends that the applicant provide landscaping along the perimeter of the fast food restaurant building where possible, but hereby approves the building perimeter landscaping as shown on the site plan date stamped Feb. 24, 2003 and as amended by Condition I under Section 8 of this ordinance.
- D. (§ 18.30.090.C.12) 10-ft wide landscape requirement. The Council recommends that the applicant provide minimum 10-ft wide landscape areas where possible, but hereby approves landscape areas less than 10 ft in width where necessary to improve on-site parking and circulation.
- E. (§ 18.30.090.A.4) No visual flat rooflines allowed. The Council hereby approves parapet walls within the Tharaldson PUD where it would result in a superior building design.
- F. (§ 18.30.090.A.1 and § 18.30.090.A.11) Architectural consistency. The Council recommends that the applicants comply with the city-wide PUD architectural standards to the greatest extent possible, however, hereby approves exceptions to the PUD standards where it will result in a superior design. Also, the Council hereby grants the Architectural Review Board the authority to redefine the architectural theme of the Tharaldson PUD.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 9. The approved project shall be subject to the following conditions:

- A. The applicant shall comply with the mitigation measures of the mitigated Negative Declaration.
- B. With the exception of any deviations approved by the City Council, the project shall be subject to compliance with the Tharaldson PUD guidelines and city-wide PUD standards, as contained in Ordinance No. 1475 and Chapter 18.30 of the Morgan Hill Municipal Code (MHMC), respectively.
- C. The signs identified on the project plans, including but not limited to menu boards, directional signs, advertising signs and building identification signs, are not approved as part of the zoning amendment application. Signs require separate review and approval by the Planning Division.
- D. Defense and indemnity. Applicant agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, injuries, costs and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed against City by reason of its approval of applicant's project. In addition, developer shall pay all pre-tender litigation costs incurred on behalf of the City including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals, but shall not be required to pay any litigation from the City. However, developer shall continue to pay reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted. This provision shall remain in effect in perpetuity and shall survive despite any further action, including but not limited to amendments or rescission of zoning on the parcel.
- E. The sit down restaurant shall be under construction prior to the issuance of a building permit for the fast food restaurant.
- F. If an interim access driveway is required on Cochrane Road, the interim driveway shall be located as close as possible to the ultimate driveway location (centered on the property line between the two restaurant sites), and

located just west of the Caltrans right of way. The necessity and timing for the installation of the interim access driveway shall be determined by the Director of Public Works.

- G. Within one year of issuance of building permit for the sit-down restaurant, the applicant shall secure approval from Caltrans for the construction of the new right turn in/right turn out driveway on Cochrane Road, centered on the property line between the two restaurant sites, and for the landscaping and on-going maintenance of the Caltrans right-of-way landscaping at the northwest corner of Cochrane Road and Highway 101. Should Caltrans not approve the encroachment request, and should the Public Works Director find that the interim driveway location on Cochrane Road pose traffic circulation or safety problems, the matter shall be reviewed by the Planning Commission and appropriate mitigation identified. That mitigation shall be implemented by the property owner at his expense, if any.
- H. Upon closure of the existing right turn in only driveway on Cochrane Road, the applicant shall berm and landscape the area to the satisfaction of the Planning Division.
- I. The applicant shall provide additional landscaping at the southwest corner of the fast food restaurant building, in between the columns, similar to the landscaping proposed at the southeast area of the building.

The foregoing ordinance was introduced at the special meeting of the City Council of the City of Morgan Hill held on the 30th Day of April 2003, and was finally adopted at a regular meeting of said Council on the 21st Day of May 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1616, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st Day of May, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: April 30, 2003

REQUEST TO CO-SPONSOR A “SUPPORT OUR TROOPS” EVENT AT THE COMMUNITY & CULTURAL CENTER AMPHITHEATER

RECOMMENDED ACTIONS: Council Discussion and Direction regarding City Co-Sponsorship of the “Support Our Troops” Event

Agenda Item #7

Prepared By:

**Council Services &
Records Manage/
City Clerk**

Submitted By:

City Manager

EXECUTIVE SUMMARY:

Mayor Kennedy met with Roger Salstrom to discuss a one hour event proposed for the Community & Cultural Center Amphitheatre to support the military troops. It is being suggested that there be a flag raising ceremony, support of the military troops, and recognition of Veterans. May 26, 2003, Memorial Day, is the day that is being considered for this event. Mayor Kennedy is requesting that the Council consider co-sponsorship of the “Support Our Troops” event.

FISCAL IMPACT: No fiscal impact other than staffing and miscellaneous charges (approximately \$250) should the City Council agree to co-sponsor the event. If a rate payer is to use the Amphitheater, the revenue that could be anticipated would range from approximately \$750 (non profit rate) to \$1,090 (general user rate) which includes a \$500 refundable deposit fee. These estimates do not include security guard fees. These fees were based on the limited amount of information provided to staff.